

Application No.: 10/617894

Case No.: 58670US004

REMARKS

Claims 1-43, and 45-65 are pending in the present application. Claim 44 was previously cancelled. Claims 23-26 and 65 were examined and rejected in the present Office Action. Claims 1-22, 27-43, and 45-64 have been withdrawn from consideration.

Applicants request reconsideration and withdrawal of the present rejections based on the following comments.

Double Patenting

Claims 23-26, 44, and 65 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,797,361. Applicants will submit a terminal disclaimer disclaiming any additional term past the term of U.S. Patent 6,797,361 to address this rejection.

Additionally, claims 23-26 and 65 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 10/617,893. Applicants will also submit a terminal disclaimer disclaiming any additional term past the term of co-pending Application No. 10/617,893 to address this rejection.

§102(b) Rejections

Claims 23, 24, and 26 were rejected under 35 U.S.C. §102(b) as being anticipated by Bambara et al. (U.S. Pat. No. 5,350,544). Applicants respectfully traverse this rejection for the following reasons.

The present Office Action, in rejecting claim 23, asserts that the recitation of "'used as a masking material' impacts [sic] no definite structure to the claimed polymer article," and that the rejection is thus maintained. The Office Action, however, appears to have failed to consider that claim 23 also recites "an elongate foam polymer strip," which is indeed a structure. Bambara et al. fails to teach or suggest this feature of claim 1, as an example of at least one feature that the reference fails to meet. Accordingly, claim 23 is believed allowable over Bambara et al.. Additionally, claims 24 and 26 depend from claim 23 are believed allowable at least based on their dependency, as well as on their merits.

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Claims 23-26 and 65 were further rejected under 35 U.S.C. §102(e) as being anticipated by WO 99/46056 ("WO'056"). Applicants respectfully traverse this rejection for the following reasons.

Concerning independent claim 23, the WO '056 reference does not teach or suggest a polymer article having the structural features of "an elongate foam polymer strip . . . wherein the strip includes a predetermined surface pattern in at least a portion of the strip, the surface pattern including at least a first area that is partially compressed to define at least a part of the surface pattern and at least a second area that is compressed either more or less than the first area to define the predetermined surface pattern." The Office Action asserts that WO '056 teaches the claimed first and second areas in figure 2A with the "elongate" strip 8 and removable edge portion 10, respectively. Applicants respectfully disagree. Neither of the elements 8 or 10 in WO '056 teaches a teaches surface pattern with a first area partially compressed to defined part of the surface pattern and a second area with a different compression. Rather elongate strip 8 and edge portion 10 are simply formed by cold-welded seams formed with a same compression force. Furthermore, the same elongate strip (i.e., either 8 or 10) does not have two areas of different compression). Accordingly, WO '056 does not teach or suggest all of the elements of claim 23. The same arguments also apply to claim 65, which has similar claim features. Also, claims 24-26 are believed to be allowable at least for the same reasons due to their dependency on claim 23.

Claims 23-26 and 65 were also rejected under 35 U.S.C. §102(e) as being anticipated by Bouic (U.S. Patent No. 6,797,361). Applicants respectfully traverse this rejection for the following reasons.

The cited reference does not teach or suggest a polymer article having the structural features of an elongate foam polymer strips including "a predetermined surface pattern in at least a portion of the strip, the surface pattern including at least a first area that is partially compressed to define at least a part of the surface pattern and at least a second area that is compressed either more or less than the first area to define the predetermined surface pattern." Similarly, with respect to independent claim 65, the cited reference does not teach or suggest "[a]n elongate foam strip" featuring "a surface pattern provided in an area that has been formed to a desired shape under pressure with a first area partially compressed area and a second area compressed one of more or less than the first area." The cited reference does not disclose a surface pattern

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having the above claimed features, but merely teaches a combination of foam strips 1a, 1b, 1c joined at a cold welded seam 4 that is a single, fully compressed area effecting a seam by pressure rollers or wheels 3. Accordingly, claims 23-26, and 65 are allowable over the cited reference and the rejection should be withdrawn.

Claims 23-26, and 65 were yet further rejected under 35 U.S.C. §102(b) as being anticipated by Barrows et al. (U.S. Patent No. 5,547,725). Applicants respectfully traverse this rejection based on the following comments.

This reference is duplicative with the other references discussed above in that seams are created by using blunt rotary cutters by cold welding. Thus for the same reasons, this reference also fails to teach or suggest the claimed elements such as a polymer strip including "a predetermined surface pattern in at least a portion of the strip, the surface pattern including at least a first area that is partially compressed to define at least a part of the surface pattern and at least a second area that is compressed either more or less than the first area to define the predetermined surface pattern" or "[a]n elongate foam strip" featuring "a surface pattern provided in an area that has been formed to a desired shape under pressure with a first area partially compressed area and a second area compressed one of more or less than the first area." The Office Action asserts that the circular strip and joiner line shown in Fig. 5 of Barrows discloses the presently claimed first and second portions. Again, however, the "joiner lines" are simply cold welded seams, not a second portion of a surface pattern. Accordingly, Applicant submits that Barrows does not teach or suggest all of the features of claims 23-26 and 65 and that the rejection of these claims should be withdrawn.

§102(b)/103(a) Rejection

Claims 23-26 and 65 were rejected under 35 U.S.C. §102(b) as being anticipated by EP 0 795 356 (EP '356) and alternatively under 35 U.S.C. §103(a) as obvious in light of EP 0 795 356. Applicants respectfully traverse this rejection as detailed below.

The Office Action asserts that EP '356 discloses or "strongly suggests" the claimed features of the rejected claims. Although EP '356 discloses a sealing and covering strip having a set shape, the reference does not teach or suggest a polymer strip including "a predetermined

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surface pattern in at least a portion of the strip, the surface pattern including at least a first area that is partially compressed to define at least a part of the surface pattern and at least a second area that is compressed either more or less than the first area to define the predetermined surface pattern" or "[a]n elongate foam strip" featuring "a surface pattern provided in an area that has been formed to a desired shape under pressure with a first area partially compressed area and a second area compressed one of more or less than the first area." . No teaching or suggestion is given by EP '356 that the shape of the strip 100, 200, 300, or 400 includes areas of varied compression that thereby define the shape. Rather, the reference explicitly teaches merely cutting, sawing or milling the material to define the shape (see e.g., claim 19), which teaches away from using varied compression to achieve a desired surface pattern. Thus, even though the strip 100, for example, may have portions 11 and 14 having different thicknesses, this does not meet the claims since EP '356 appears to teach away from compressing to defined surface shapes. Accordingly, Applicants respectfully submit that EP '356 does not teach or suggest all of the elements of claims 23-26, and 65 and that the rejection should be withdrawn.

Of further note, the Office Action appears to assert that "surface pattern" is equivalent to a general surface shape or topography. This is not the case as the application draws distinction between shaping and patterning. Furthermore, the Office Action asserts that "[w]hat the claims require are a 'surface pattern' having a first and second area having different dimensions." This is a misstatement of the claimed subject matter. The claims feature first and second areas that define a surface pattern where the areas are of differing compression. No mention of dimensions is made in the claims.

Conclusion

Applicant asserts that claims 23-26, and 65 are allowable over the prior art of record. Applicant requests reconsideration in view of the remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

Respectfully submitted,

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